Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1037

STAR CHOPPER COMPANY, INC.,
PETITIONERS,

v.

PAULA H. ROY,
ADVANCED MATERIALS SYSTEMS, INC.,
and ASHOK HINGORANY,
RESPONDENTS.

BRIEF FOR RESPONDENTS ADVANCED MATERIALS SYSTEMS, INC. AND ASHOK HINGORANY IN OPPOSITION TO PETITION FOR CERTIORARI

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Opinions Below

The Opinion of the Court of Appeals for the First Circuit (Pet. App. 1a-21a) is reported at 584 F.2d 1124. The Opinion of the District Court as to certain issues is reported at 442 F. Supp. 1010.

Questions Presented

I. Whether the trial justice properly required each juror to state his or her verdict upon the poll of the jury?

II. Whether an unsworn statement of a juror may be used to impeach the verdict of the jury?

III. Whether the trial justice was correct in applying the choice of law rule of the forum state to the separate issues of the two actions?

Statement of the Case

Respondent Paula A. Roy, a Massachusetts resident, was employed in the Commonwealth of Massachusetts by respondent Advanced Materials Systems, Inc. (AMS), a Rhode Island corporation, having its sole place of business in Massachusetts. Respondent Ashok Hingorany was similarly a Massachusetts resident and employee of AMS. While in the course of her employment, respondent Roy was injured by a machine which had been manufactured by petitioner, Star Chopper Company, Inc., a Rhode Island corporation, having its sole place of business in Rhode Island. Hingorany had negotiated on behalf of AMS for the purchase of the machine and had certain responsibilities for its set up and operation at the AMS place of business.

Miss Roy sued petitioner for damages on theories of negligence, breach of warranty and strict products liability. Petitioner thereafter brought a third-party action against respondent Hingorany seeking contribution or indemnity for any damages awarded against it and against respondent AMS seeking indemnity. Prior to the presentation of evidence to the jury, the trial justice granted, in part, a motion for summary judgment on behalf of respondents

Hingorany and AMS on the question of contribution[1] and reserved judgment on the motion with respect to the issue of indemnity. The motion was eventually denied with respect to that question. However, prior to the submission of the case to the jury, a directed verdict was granted in favor of respondent Hingorany.

The case eventually went to the jury on respondent Roy's claims of breach of warranty and strict products liability and on petitioner's claim against respondent AMS for indemnity. The jury returned verdicts for respondent Roy on the strict products liability claim and for respondent AMS on the third-party indemnity claim. During the polling of the jury on the verdict in the third-party case, one of the jurors was hesitant in announcing her verdict. After a brief comment by the trial justice, she unqualifiedly responded to the Clerk that her verdict was for AMS.

On appeal to the Court of Appeals for the First Circuit, the judgment of the district court was affirmed.

Argument

The instant petition fails to set forth any of the reasons usually considered by this court for review of cases on writ of certiorari. There is no conflict among the circuits as to any issue raised, no decision of a court of appeals on an important question of state law in conflict with applicable state law, no decision on an important question of federal law which should be settled by this court, no decision on a federal question in conflict with an applicable decision of this court nor any departure from the accepted and usual course of judicial proceedings or sanction thereof by a lower court as to call for an exercise of this court's

[1] Although the third-party complaint did not specifically demand contribution from AMS, the lack of specific factual allegations apparently caused the court and the parties to treat it as if it had.

power of supervision. Sup. Ct. R. 19(1). Even if it be assumed that the acts alleged by petitioner were error, the errors do not rise to the level of those ordinarily considered by this court on certiorari. In any event, certiorari should not be granted, since there was no error below.

I. The Jury Was Properly Polled

After the announcement of the verdict for respondent Advanced Material Systems, Inc. in the third-party action, the jury was polled on their individual verdicts. During the polling, one of the jurors expressed some hesitation in announcing her verdict.

> The Clerk: Mrs. Carnevale—
> Juror Carnevale: Could I ask, I need help, I think. I'd like to ask someone a question, I don't know who to ask.
> The Court: That's not the point, Madam; the point is this is your verdict sheet. The question is when you voted, "Do you find for Star Chopper Company, Inc. or Advanced Material Systems, Inc.?" all right—
> Juror Carnevale: Advanced Material Systems.
> The Court: Is that clear enough to you?
> Juror Carnevale: Yes, your honor.
> The Court: All right.
> The Clerk: Do you find for Star Chopper Company, Inc. or Advanced Material Systems, Inc.?
> Juror Carnevale: Advanced Material Systems.

In responding to the inquiry of the Clerk, Juror Carnevale was clearly expressing a present statement of her verdict. By conveniently omitting this portion of the colloquy, petitioner has attempted to make it appear otherwise. Petition, pp. 6-7. While the juror's statement can hardly be considered as an indication of dissent, the trial judge properly performed his duty.

> . . . If on the poll of the jury it *appears* that a juror dissents, the judge may interrogate such juror for the purpose of ascertaining [her] true position. But once the position is ascertained it 'is both unwise and undesirable that the court should enter into an argument with the juror or require an explanation of [her] change of position. . . .' 5A J. Moore, *Federal Practice*, ¶49.07, p. 2239 (1977) (emphasis added) (footnotes omitted).

See also *Grace Lines, Inc.* v. *Motley*, 439 F.2d 1028, 1031-1033 (2d Cir. 1971); *United States* v. *Greico*, 261 F.2d 414, 415-416 (2d Cir. 1958), *cert. denied*, 359 U.S. 907, 79 S. Ct. 582, 3 L. Ed. 2d 572 (1959). The jury verdict was, therefore, properly received and entered.

II. A Juror's Verdict May Not Be Impeached by Her Own Unsworn Statement

The day following the verdict, Juror Carnevale was interviewed by the trial judge due to information which he had received. (Pet. App. 23a-27a)[2] Examination of her statements indicates that she was convinced by the other jurors that the law was such that the verdict in the third-party action should properly be for the third-party defendant. There does not appear to be even an intimation of any improper conduct on the part of any of the jurors. Even if the statement might conceivably be considered to impeach the jury's verdict, this court has held squarely that significant policy reasons require that such an action not be permitted.

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[2] It is noted that the statements made by Juror Carnevale to the trial judge were not made under oath and should, therefore, not be considered as part of the record. However, as is shown, even if made under oath, the statements would not be competent to impeach the verdict.

> . . . [T]he weight of authority is that a juror cannot impeach his own verdict. The rule is based upon controlling considerations of a public policy which in these cases chooses the lesser of two evils. When the affidavit of a juror, as to the misconduct of himself or the other members of the jury, is made the basis of a motion for a new trial, the court must choose between redressing the injury of the private litigant and inflicting the public injury which would result if jurors were permitted to testify as to what had happened in the jury room.
>
> These two conflicting considerations are illustrated in the present case. If the facts were as stated in the affidavit, the jury adopted an arbitrary and unjust method in arriving at their verdict, and the defendants ought to have had relief, if the facts could have been proved by witnesses who were competent to testify in a proceeding to set aside the verdict. But let it once be established that verdicts solemnly made and publicly returned into court can be attacked and set aside on the testimony of those who took part in their publication and all verdicts could be, and many would be, followed by an inquiry in the hope of discovering something which might invalidate the finding. Jurors would be harassed and beset by the defeated party in an effort to secure from them evidence of facts which might establish misconduct sufficient to set aside a verdict. If evidence thus secured could be thus used, the result would be to make what was intended to be a private deliberation, the constant subject of public investigation; to the destruction of all frankness and freedom of discussion and conference. *McDonald* v. *Pless*, 238 U.S. 264, 267-268, 35 S. Ct. 783, 784, 59 L.Ed. 1300, 1302 (1915).

This rationale is currently reflected in Rule 606(b) of the Federal Rules of Evidence:

> Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent or dissent from the verdict or indictment or concerning his mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may his affidavit or evidence of any statement by him concerning a matter about which he would be precluded from testifying be received for these purposes.

Thus, the statements of Juror Carnevale, even if considered to be testimony or an affidavit, may not be considered as a basis for impeaching the verdict. Certainly the supervisory power of this court should not be invoked to review an action of the trial judge, as approved by the Court of Appeals, which was, on its face, in compliance with well settled law. Even if it were necessary to examine the substantive allegations of the juror, the comments of Chief Judge Lumbard in his concurring opinion in *Grace Lines, Inc.* v. *Motley, supra*, most appropriately summarize the issue:

> In this case there was no basis for the district judge to find that the one juror did not in fact agree at the time the verdict was rendered. The juror never said

that it was not her verdict. On the contrary it was implicit in her statement that she gave up her views and that she did in fact ultimately agree so that the verdict would be unanimous. Under our system this was a good and proper reason, and it merits no further cross-examination either by the court or by anyone else. 439 F.2d at 1034. (footnotes omitted).

III. The Proper Law Was Applied in the Third-Party Action

There can be no dispute that the district court in a diversity matter must apply the sustantive law of the forum state, including its conflict of laws rules. *Klaxon Co.* v. *Stentnor Electric Mfg. Co.*, 313 U.S. 487, 496, 61 S.Ct. 1020, 85 L.Ed. 1477 (1941). The trial judge recognized this obligation. *Roy* v. *Star Chopper Co., Inc.*, 442 F.2d 1010, 1013 (D.R.I. 1977). Rhode Island law requires the application of the "interest-weighing approach" in conflicts cases. *Woodward* v. *Stewart*, 104 R.I. 290, 243 A. 2d 917 (1968). Under this approach, the substantive law of different jurisdictions may be applied to different issues in the same case, depending upon which state has the most significant interest with respect to that issue. *Brown* v. *Church of the Holy Name of Jesus*, 105 R.I. 322, 331, 252 A. 2d 176, 181 (1969). The Rhode Island Supreme Court has decided that it will enforce the immunity provisions of the Massachusetts workmen's compensation statute where compensation is paid under that statute even though the tort was committed in Rhode Island. *Busby* v. *Perini Corp.*, 110 R.I. 49, 290 A. 2d 210 (1972). Of course, in the present matter, contribution from respondent Hingorany would have to have been based on conduct occurring in Massachusetts, thus making an even stronger case for applying the substantive law of Massachusetts by a Rhode Island court. The trial

court and the Court of Appeals applied well settled Rhode Island conflicts law in sustaining the Massachusetts created immunity from contribution of respondent Hingorany.

Petitioner's due process argument fails to comprehend that the benefit of the Massachusetts immunity was required as a matter of Rhode Island law. The due process claim is, therefore, illusory. Petitioner cites no authority which would give substance to its argument or make the issue worthy of consideration by this court.

Conclusion

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted,

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